need in order to shoot down any figure at any time would be innuendo—innuendo, speculation, suspicion, unproven allegations, nothing more. We are not going to let that happen. We are not going to establish that precedent. It would be bad for the Senate. It would be bad for the United States of America.

Please don't misunderstand me. I am glad Dr. Ford had a chance to have her say. We owed her that much. I know it took some courage, and it is a reminder to all Americans that victims can and should be heard. As I said, I myself have two daughters. We all have a mother. Some are fortunate to have sisters or a spouse. This can be a very personal matter to every one of us. Yet we all know that all of us have fathers, and many of us have brothers. Some have husbands and sons. In other words, my point is, if this kind of uncorroborated allegation would seem so manipulated in exploiting vulnerable people who made accusations like this and we tolerate that, I think it will forever poison the confirmation process and discourage good people from coming forward.

We must always be fair to both the victims and those who stand accused. It has to be a two-way street. I have supported Judge Kavanaugh's nomination because I have known him since the year 2000. In my experience, he has always been an upstanding and certainly he is an incredibly well-qualified individual.

We have heard everybody—from his fellow lawyers to his law clerks, to women he has worked with, to former Presidents of the United States—say that. We know he has an incredible record on the DC Circuit Court of Appeals, where many of his decisions have been affirmed by the U.S. Supreme Court. I know he will judge fairly and carefully. I believe he belongs on the Nation's highest bench. In a few more days, after a few more delays, we will finally vote to put him there and say enough with the games.

I yield the floor.

I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

DARK MONEY RULE

Mr. WYDEN. Mr. President, I am submitting two letters into the CONGRESSIONAL RECORD in order to clarify the application of the Congressional Review Act, CRA, to the recent rule Rev. Proc. 2018–38, issued by the Treasury Department and the IRS, to dramatically weaken the disclosure rules for large contributions to certain tax-exempt organizations, including many that engage in political activity, what I and others call the dark money rule. In doing so, I also want to take the opportunity to comment on the rule itself and on the inappropriate and irresponsible approach that the administration is taking to the application of the CRA to the dark money rule.

By way of background, in 1971, as part of a general effort to improve the ability of the IRS to assure that tax-exempt organizations are complying with the tax and election laws, the Treasury Department promulgated a legislative regulation requiring certain tax-exempt organizations to disclose to the IRS, as part of their annual filing, the identity of those who contribute $5,000 or more to the organization. This information is not made available to the public, except in certain cases, but it is can be used by the IRS, State tax administrators, and other Federal agencies.

In recent years, this disclosure requirement has become controversial. Some, particularly conservative groups, have called for the rule to be repealed in an attempt to keep donor information out of the hands of State tax administrators and law enforcement. Others have urged that the disclosure rules be strengthened. I am one of them. Following the 2010 Citizens United decision, more and more dark money has flooded into secretive tax-exempt organizations and into election campaigns in the form of such things as anonymous ''issue ads.'' I have urged that the contributor information be made available to the public and, further, that the IRS improve its application of the rules designed to prevent tax-exempt organizations from engaging in excessive political campaign activity under false pretenses of ''social welfare.'' For example, I have been particularly concerned about reports that a group that is tax exempt under Tax Code section 501(c)(4) that is associated with the National Rifle Association, which has engaged in extensive political activity, may have received large contributions from foreign sources.

In the midst of all of this controversy, on July 16, without any public notice and comment or any consultation with me as ranking Democratic member of the Finance Committee, the Treasury Department and the IRS issued Rev. Proc. 2018–38, which invokes a narrow provision that allows the Treasury Secretary to waive particular reporting requirements in appropriate situations, to effectively repeal the entire 1971 regulation requiring the disclosure of large contributions. Perhaps coincidentally and certainly ironically, this was done late in the evening of the day in which the Justice Department arrested an alleged Russian agent, Maria Butina, for attempting to influence American political discourse through a ''gun rights organization,'' later revealed to be the National Rifle Association, a 501(c)(4) dark money political organization.

This was an outrage. It was terrible policy and a terrible process. As I said at the time, the political brazenness of this action shocks the conscience. At a time when the U.S. intelligence community is warning that foreign actors are actively working to interfere in American elections, the Trump administration has decided to tie the hands of the only Federal agency with visibility into financial flows of foreign funds into dark money political organizations.

When the administration proposed the dark money rule, it submitted the rule to Congress for review under the CRA, which allows Congress to disapprove rules after they have been issued. The administration's submission to Congress explicitly states it was a ''Submission of Federal Rules under the Congressional Review Act.'' Senator TESTER and I were determined to invoke this process in order to overturn the dark money rule.

There was, however, a procedural problem. The CRA includes a ''clock,'' limiting the period for challenging a new rule, and, under the terms of the CRA, that clock begins on the later of the date the rule is submitted to Congress, and the date it is published in the Federal Register, ''if so published.'' In this case, apparently for the first time, we were dealing with a rule that had been submitted to Congress for review under the CRA but not published in the Federal Register because this is the sort of material that the IRS publishes in the Internal Revenue Bulletin IRB, rather than in the Federal Register. This created a technical question about how to apply the CRA time clock to the IRS rule. To be clear, the question was not whether the CRA applied to the dark money rule, but rather, when the clock for congressional review began.

After consulting with the Parliamentarian, who advised that the CRA process would be clarified if the IRS would confirm, in writing, that the rule would not be published in the Federal Register, I sent Acting IRS Commissioner David Kautter a brief letter asking him to do so. This seemed to me to be a very straightforward request. The IRS's own internal procedure manual makes clear that matters that are issued as ''revenue procedures'' are published in the IRB rather than the Federal Register. Further, an IRS official had informally confirmed by email that would be the case here. On top of that, the dark money rule was in fact published in the IRB on July 30.

I ask unanimous consent that my August 21, 2018, letter be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

UNITED STATES SENATE,
COMMITTEE ON FINANCE,
Washington, DC, August 21, 2018.

Hon. DAVID KAUTTER,
Acting Commissioner and Assistant Secretary of the Treasury for Tax Policy, Internal Revenue Service, Washington, DC.

DEAR ACTING COMMISSIONER KAUTTER: As you know, on July 26, the Treasury Department and IRS submitted to the Senate,

under the Congressional Review Act (CRA), Rev. Proc. 2018–38, which modifies the information to be reported to the IRS by certain organizations exempt from tax under section 501(a) of the Internal Revenue Code.

Under the CRA, the period for potential Congressional review begins on the later of the date of submission to Congress or publication in the Federal Register, ''if so published.'' My understanding is that revenue procedures are not published in the Federal Register but instead are published in the Internal Revenue Bulletin.

In light of this, it would facilitate the Congressional review process if the IRS would confirm in writing that the IRS will not submit Rev. Proc. 2018–39 for publication in the Federal Register. I would appreciate it if you would do so.

Please call me or have a member of your staff contact Tiffany Smith or Mike Evans of the Finance Committee Democratic staff if you have any questions.

Thank you for your assistance with this.

Sincerely,

RON WYDEN,
Ranking Member,
Committee on Finance.

Mr. WYDEN. Mr. President, my letter went unanswered for almost 5 weeks. Eventually, the Parliamentarian indicated to both Democratic and Republican staff that she was prepared to allow Senator TESTER and me to move forward with a disapproval resolution under the CRA without an IRS response to my letter, so that we would not lose our right to challenge the rule on a timely basis. Based on this, on Monday, September 24, Senator TESTER and I submitted our disapproval resolution, S.J. Res. 64. That same day, I finally received a reply from Acting Commissioner Kautter. In it, he confirmed, at long last, the elementary proposition that the dark money rule would not be published in the Federal Register. In addition, he went on to discuss an issue I had not raised in my original letter. He stated that, despite the fact that the administration had formally submitted the rule to the House and Senate for review under the CRA, understanding now that Senator TESTER and I intended to challenge the rule under the CRA, the Treasury Department intended to reverse its previous decision and argue that Rev. Proc. 2018–38 was somehow not subject to congressional review.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE,
Washington, DC, September 24, 2018.

Hon. RON WYDEN,
Ranking Member, Committee on Finance,
U.S. Senate, Washington, DC.

DEAR SENATOR WYDEN: Thank you for your inquiry regarding whether the IRS will submit Revenue Procedure 2018–38 for publication in the Federal Register.

Revenue procedures are not published in the Federal Register; rather, they are published in the Internal Revenue Bulletin (IRB). Revenue Procedure 2018–38 was published in IRB 2018–34 and will not be published in the Federal Register.

Not all revenue procedures, including many transmitted to Congress using the form prescribed by the Office of Management and Budget (OMB), meet the definition of a rule under the Congressional Review Act (CRA). We define a revenue procedure as ''an official statement of a procedure by the Service that affects the rights or duties of taxpayers or other members of the public under the Internal Revenue Code, related statutes, tax treaties, and regulations, or information that, although not necessarily affecting the rights and duties of the public, should be a matter of public knowledge.'' Chief Counsel Directives Manual (CCDM) section 32.2.2.3.2 (emphasis added). Procedural rules that do not substantially affect the rights or obligations of the public are not subject to the CRA. See 5 U.S.C. Section 804(3)(C).

We generally submit revenue procedures to Congress and to the Government Accountability Office (GAO) out of an abundance of caution and in the interest of keeping Congress fully informed. This longstanding practice serves two goals. First, it allows Congress to consider whether a revenue procedure is subject to the CRA by requesting advice from GAO. Second, if a revenue procedure meets the definition of a rule under the CRA, the consequences of failing to submit it when required are significant. Because rules are effective only after submission to Congress, a revenue procedure that is later deemed to be a rule would not be effective if it had not been submitted following the CRA. Consequently, our submission of a revenue procedure using the standard CRA form prescribed by OMB does not necessarily indicate that we have determined the revenue procedure is subject to the CRA.

We do not believe Revenue Procedure 2018–38 is a ''rule'' within the meaning of the CRA, and we are consulting with GAO on this matter. See 5 U.S.C. Section 804(3)(C). In this revenue procedure, we exercised our discretion under existing regulations to limit our receipt of personally identifiable donor information that is not necessary for efficient tax administration. The revenue procedure did not alter the substantive standards or criteria that apply to tax exempt organizations, nor did it alter the requirement that organizations maintain donor information and submit the information to the IRS upon request. The revenue procedure imposed no new substantive burdens and in no way limited public access to return information that was previously open to public inspection. For these reasons, we believe Revenue Procedure 2018–38 is exempt from the CRA.

I hope this information is helpful. If you have questions, please contact me, or a member of your staff may contact Leonard Oursler, Director, Legislative Affairs.

Sincerely,

DAVID J. KAUTTER,
Acting Commissioner.

Mr. WYDEN. Mr. President, acting Commissioner Kautter's response is deeply troubling, for several reasons.

First, why did it take so long? Every bureaucracy has its problems, but almost 5 weeks, on a time-sensitive matter, the answer to which should be clear in 5 minutes? As I said on the Senate floor last week: ''It looks to me like the administration has a policy on their hands that they know is corrupt—that they know is undemocratic. And so they're playing hide the ball. Because the more the public hears about this dark money rule, the less they like it.''

Further, the argument Acting Commissioner Kautter makes in the letter is utter nonsense. In the first place, he mischaracterizes the CRA, in a way that would render the entire law unworkable. For over 20 years, here is how the CRA has worked: If the administration submits something to Congress under the CRA, that is that; it is subject to congressional review under the terms of the CRA. In the Senate, that means the clock starts, and the period for the consideration of a disapproval resolution begins. If, on the other hand, the administration does not submit a matter under the CRA, but a Senator or Representative believes that the matter nevertheless should be subject to the CRA, that Senator or Congressman can ask the Government Accountability Office to review whether the CRA applies. This has happened about 20 times since 1996. Congress has never required the GAO to opine on the applicability of the CRA to a rule formally submitted by an agency to the Congress for review under the CRA. In Acting Commissioner Kautter's letter, he fabricates out of whole cloth a new requirement for congressional review, which runs counter to precedent established over the past two decades.

Acting Commissioner Kautter takes the position that the administration's submission of the rule under the CRA is not dispositive. It is, instead, just a starting point, to, as he writes, ''allow[ ] Congress to consider whether a revenue procedure is subject to the CRA by requesting advice from GAO.'' This is unprecedented because all previous requests to GAO related to matters that had not been submitted under the CRA. It is inconsistent with the plain text of the CRA and with longstanding practice, in which we only resort to a GAO opinion for matters that have not already been submitted under the CRA. It also is completely unworkable because it would require GAO to review every rule submitted under the CRA, to confirm that it is indeed subject to the CRA. Said another way, it would require the Senate to look behind all 4,271 rules submitted by agencies to the Senate in this Congress under the CRA to determine if the CRA, in fact, applied. We cannot have ''do-overs'' here.

Second, Acting Commissioner Kautter's position is inconsistent with administration practice. In submitting the dark money rule to the Senate, the administration was not simply trying to be courteous and transparent, making sure the Senate was aware of the latest developments at the IRS. It was, instead, complying with the CRA, based on a determination that the rule was subject to the CRA.

This is reflected in the process established in the Internal Revenue Manual, IRM. One section of the IRM relates to ''Congressional Review of Rules.'' After describing the CRA general rule and three exceptions, the IRM says, ''Revenue rulings, revenue procedures, notices, and announcements that are rules under the [CRA] must be submitted for congressional review before they can become effective. Whether a revenue ruling, revenue procedure, notice, or announcement is considered a

rule subject to reporting is determined on a case-by-case basis. Ministerial revenue rulings and revenue procedures; notices and announcements relating to error corrections, personnel matters, or proposed rules; and press releases generally will not be considered rules under [the CRA].''

Thus, the IRS's own process requires the agency to determine, on a case-by-case basis, whether a document issued by the IRS constitutes a rule for purpose of the CRA. The IRS in fact exercises judgment about whether to submit a revenue procedure as a rule under the CRA: As of September 10, the IRS had issued 45 revenue procedures in 2018, only 27 of which were submitted to the Senate. Specifically, in this case, on July 26, over the signature of the Chief of the IRS Publications and Regulations Branch, the IRS and the Treasury Department submitted, to Vice President Pence, as President of the Senate, a copy of Rev. Proc. 2018–38, entitled a Submission of Federal Rules under the Congressional Review Act. The submission was docketed in the Senate as EC–6097, and it was referred to the Finance Committee.

Finally, even if the administration had not submitted the dark money rule under the CRA, there is no question the rule is subject to the CRA. The CRA applies to rules as defined under the Administrative Procedure Act, which states in relevant part that a rule is ''the whole or part of an agency statement of general . . . applicability and future effect designed to implement, interpret, or prescribe law or policy,'' with three exceptions: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that does not substantially affect the rights or obligations of nonagency parties.

The dark money rule is clearly a statement of general applicability and future effect. The only real question, then, is whether it is subject to one of the exceptions, particularly the exception for ''rules of agency organization, procedure, or practice that [do] not substantially affect the rights or obligations of non-agency parties.''

Here, it is clear that the rule has a substantial effect on nonagency parties. Under the provisions of IRC section 6103, State tax administrators may obtain from IRS tax-exempt donor information for State tax administration purposes. As a result of Rev. Proc. 2018–38, State tax administrators will no longer have the right to obtain donor information from the IRS, undermining States' ability to enforce tax-exempt rules on organizations operating within their borders. Further, as the Treasury Department clearly stated in a July 16 press release, Rev. Proc. 2018–38 will reduce the burden of disclosure and filing obligations of tax-exempt organizations because they no longer will be required to disclose the identifies of large donors. This is a big deal. It will significantly inhibit IRS enforcement efforts, and it will make it easier for dark money to continue to flood in. Indeed, that is why so many groups have been urging that the disclosure requirement be repealed.

As a final note, the IRS may argue that repeal of the disclosure rule is insignificant because the IRS doesn't systematically cross-check this data against other sources of tax information. This is a large part of the problem of IRS failing to enforce existing laws relating to political activity of tax-exempt organizations. To my mind, the IRS should be using this information in order to maintain the integrity of our tax-exempt rules and election laws. If, for example, an organization named Russian Oligarchs, LLC made large contributions to a tax-exempt organization, it seems to me that this is something the IRS should want to know. At a time when foreign actors are actively attempting to interfere in American elections, law enforcement, the IRS, and State tax administrators need to have visibility into the financial flows of political nonprofits. The argument that we should no longer collect this information because the IRS is failing to use the information to enforce the law gets things precisely backward.

I urge my colleagues to support Senator TESTER and me as we work to overturn this outrageous dark money rule.

MALNUTRITION AWARENESS WEEK

Mrs. MURRAY. Mr. President, I rise today in recognition of this week as Malnutrition Awareness Week.

Malnutrition Awareness Week is a multi-organizational, multipronged campaign that aims to educate healthcare professionals on how to identify and treat malnutrition, encourage patients to discuss their nutrition status with their healthcare providers, and increase awareness of nutrition's role in patient recovery.

While we know malnutrition can severely impact patients' health outcomes, we do not currently know the full extent of malnutrition plaguing our senior population. This is because national health surveys and indicators do not include screening measures for malnutrition. National surveys and indicators are crucial not only for identifying key issues, such as malnutrition, but also for shaping public health programs and guiding healthcare professionals. By fully understanding the health problem, we can refine these tools to better address health issues affecting older adults.

Similarly, older adults and their families need guidance on how to meet seniors' unique nutrition needs. National dietary guidelines, developed every 5 years by the Departments of Health and Human Services and of Agriculture, provide valuable information to the public in regard to a healthy diet. These guidelines are examples of Federal resources that could be tailored to reflect the nutritional needs of specific populations, such as older adults.

Since malnutrition can lead to greater risk of chronic disease, frailty, disability, and increases in health care costs, it is important to properly identify cases and provide adequate interventions, even as people transition across care settings. To strive toward this goal, we must consider options within the healthcare system and our Federal programs to improve care and nutritional support for older adults.

This week is an important opportunity to remember that the nutritional challenges facing people of all ages, and I hope my colleagues will join me in working to understand and address these challenges.

NATIONAL RICE MONTH

Mr. KENNEDY. Mr. President, I want to take a moment to honor the more than 125,000 hard-working men and women who work in America's rice industry. September is National Rice Month, and it is also the start of our domestic rice harvest. This year, roughly 23 billion pounds of rice will be grown on 3 million acres of farmland. 85 percent of the rice eaten in America comes from just 6 States: Arkansas, California, Mississippi, Missouri, Texas, and my home State of Louisiana.

Rice isn't just delicious in jambalaya or seafood gumbo; it is an indispensable part of Louisiana's economy. The 4,500 members of the Louisiana rice industry generate more than $700 million in economic benefits for the State. These small businesses not only put food on the table of America's families, but they also employ tens of thousands of workers. Altogether, America's rice crop has a $34 billion impact on our national economy.

Rice farmers are also careful stewards of our Nation's precious natural resources. Over the past 20 years, rice farmers have been able to increase their yields by as much as 50 percent. They have achieved this while using less land, less water, and less energy. American rice shines as a bright example of sustainable agriculture and the benefits of effective agricultural research.

America was born on a farm. The importance of farming to the U.S. economy cannot be overstated; agriculture provides jobs for nearly 1 in 7 Americans. While rice is a valuable export, I am pleased to say that nearly all of our domestic rice crop is consumed right here. For these and many other reasons, I am proud to celebrate National Rice Month and the world's most popular grain. I also want to extend my heartfelt support and gratitude to all American rice farmers, particularly those in the great State of Louisiana. Keep up the good work.